

CIVIL REVISION.

Before Derbyshire C. J. and Nasim Ali J.

1939
Mar. 14.

AGENT, ASSAM BENGAL RAILWAY
COMPANY, LTD.

v.

SURENDRA CHANDRA CHAKRABARTI.*

Evidence—*Official communications, Disclosure of—Privilege—Agent of a railway company—“Public officer”—Indian Evidence Act (I of 1872), s. 124—Code of Civil Procedure (Act V of 1908), s. 2 (17) (e).*

Although an Agent of a railway company may have, under s. 131 of the Indian Railways Act, 1890, power to arrest persons who commit certain offences under the Act, he is not a “public officer” within the meaning of s. 2 (17) (e) of the Code of Civil Procedure, 1908, and cannot claim, under s. 124 of the Indian Evidence Act, 1872, privilege in respect of communications made to him officially.

CIVIL RULE obtained by the Agent of Assam Bengal Railway Company, Limited.

The facts of the case and argument in the Rule are set out in the judgment.

Dhirendra Lal Khastgir and *Sudhir Kumar Khastgir* for the petitioner.

Rabindra Nath Chaudhury for the opposite party.

DERBYSHIRE C. J. In this matter the learned Munsif at Jorhat, on January 17, 1939, made an order upon the Agent of Assam Bengal Railway Company, Ltd., for the production in Court of certain documents. The Agent obtained a Rule against that order and the matter has now come on before us for hearing.

The plaintiff in the suit, one Surendra Chandra Chakrabarti, was formerly a guard on the Assam Bengal Railway and the defendant, B. Singh, a Traffic Inspector on the railway. The plaintiff alleges that the defendant falsely and maliciously made a report concerning him to his (that is, the defendant's) superior officer, which was conveyed eventually to the

* Civil Revision, No. 218 of 1939, against the order of I. Rasul, Munsif of Jorhat, dated January 17, 1939.

Agent and resulted in the plaintiff's dismissal from the railway service.

The plaintiff has not sued the railway Agent for wrongful dismissal, but has sued the defendant for defamation. The plaintiff has claimed the production of certain documents from the Agent. These documents include, according to the order made by the Judge who had got information from the plaintiff himself: (a) reports of the Traffic Inspector, (b) reports of the District Traffic Superintendent, (c) the letter of Mr. K. Cheliha with an enclosed letter of Mr. G. Sutradhar written to the Agent, (d) the reply of the Agent to Mr. K. Cheliha, and (e) letter No. 12/66, dated March 9, 1937, written by Mr. Falconer of Lukwah Tea Estate to Mr. Cuffe. How he knew that those documents were in that file can only be guessed.

The plaintiff says that the production of these documents in Court is necessary in this case. The Agent of the railway company has objected to produce the documents under s. 124 of the Indian Evidence Act, 1872, claiming that he is a "public officer" and that public interest will suffer by the disclosure.

On behalf of the Agent, it has been contended that under s. 131 of the Indian Railways Act, 1890, the Agent has power to arrest persons who commit certain offences under the Act. Hence it is argued, that he is a "public officer" by reason of the provisions of s. 2(17)(e) of the Code of Civil Procedure, 1908, which says that "every person who holds any office "by virtue of which he is empowered to place or keep "any person in confinement" is a "public officer".

It should be noted that sub-s. (2) of s. 131 of the Act states "a person so arrested shall, with the least "possible delay, be taken before a Magistrate having "authority to try him or commit him for trial". It is said that that power of arrest brings him within the definition of "public officer" cited above. I am of opinion that the power to arrest which is given,

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even if it is possessed by the Agent, does not bring him within the definition of "public officer". To place or keep a person in confinement, in my view, connotes something more than mere arrest. Arrest connotes a check or stoppage of the activities of a person. Having regard to s. 50 of the Code of Criminal Procedure, 1898, it would appear that a person is arrested when he is subjected to such restraint as is necessary to prevent his escape, and no more restraint. To place or keep a person in confinement connotes much more restraint than arrest. It connotes a person being surrounded with restraints so that his movements on each side are very materially limited.

For these reasons, I am of the opinion, that the Agent is not a "public officer". That being so, his claim to refuse to disclose the documents in question is invalid. It is his duty to produce the documents specified either personally or by a duly authorised agent to the Court for the Court's inspection and not for the inspection of any of the parties until the Court has decided upon their admissibility. At the same time, I think it right to point out that the documents must be produced subject to all just objections as to their admissibility in evidence in this case. The learned Judge must see that the documents which are used in evidence are such as are strictly relevant and admissible according to law, having regard to the issue which is raised between the parties. Discovery of this kind should not be made other than for the *bonâ fide* purpose of determining the issue which is to be tried between the parties.

In my view, this Rule must be discharged. I hope the Judge will have regard to the warning that I have given.

There will be no order as to costs in this Rule.

Let the record be sent down without delay.

NASIM ALI J. I agree.

Rule discharged.

P. K. D.